

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

<p>Robert E. & Linda K. Otto, Petitioners-Appellants,</p> <p>v.</p> <p>Monona County Board of Review, Respondent-Appellee.</p>	<p style="text-align: center;">ORDER</p> <p>Docket No. 11-67-0458 Parcel No. 8542-02-1-75-001</p> <p>Docket No. 11-67-0459 Parcel No. 8542-01-2-50-001</p> <p>Docket No. 11-67-0460 Parcel No. 8542-01-2-75-001</p> <p>Docket No. 11-67-0461 Parcel No. 8542-01-4-00-001</p> <p>Docket No. 11-67-0462 Parcel No. 8542-01-4-75-001</p> <p>Docket No. 11-67-0463 Parcel No. 8542-01-1-00-001</p> <p>Docket No. 11-67-0464 Parcel No. 8542-01-1-25-001</p> <p>Docket No. 11-67-0465 Parcel No. 8542-01-1-50-001</p> <p>Docket No. 11-67-0466 Parcel No. 8542-01-1-75-001</p>
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On May 1, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Robert E. and Linda K. Otto, were self-represented. Assistant Monona County Attorney Ian McConeghey represented the Board of Review at hearing. Both parties participated by telephone. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Robert and Linda Otto, owners of property located in Cooper Township, Monona County, Iowa and adjacent thereto, appeal from the Monona County Board of Review regarding their 2011 property assessments. The subject properties include nine parcels of agricultural realty, a dwelling, and agricultural improvements. The parcels consist of 416 acres combined. The real estate was classified as agricultural realty for the January 1, 2011, assessments summarizes below.

Docket	Parcel	Acres	2010 AV Land	2011 AV Land	% Increase ¹
11-67-0458	8542-02-1-75-001	37.00	\$ 14,261	\$ 47,364	232%
11-67-0459	8542-01-2-50-001	40.00	\$ 32,505	\$ 54,714	68%
11-67-0460	8542-01-2-75-001	40.00	\$ 35,281	\$ 55,686	58%
11-67-0461	8542-01-4-00-001	39.00	\$ 48,504	\$ 58,458	21%
11-67-0462 ²	8542-01-4-75-001	38.00	\$ 39,392	\$ 56,463	43%
11-67-0463	8542-01-1-00-001	36.60	\$ 41,490	\$ 53,913	30%
11-67-0464 ³	8542-01-1-25-001	37.13	\$ 34,285	\$ 49,366	44%
11-67-0465	8542-01-1-50-001	40.00	\$ 45,219	\$ 58,905	30%
11-67-0466	8542-01-1-75-001	39.00	\$ 46,618	\$ 61,748	32%

The Ottos protested to the Board of Review that the property was not equitably assessed with other like property under Iowa Code section 441.37(1)(a)(1), and there was an error in the assessment under section 441.37(1)(a)(4). The error claim essentially asserted the property was assessed for more than authorized by law under section 441.37(1)(a)(2) based on its current use, characteristics, and productivity (Exhibits 4-1 through 4-3, 5A, 5B, 6A through 6D). The Board of Review denied the protests.⁴

¹ We take notice of the Iowa Department of Revenue report indicating Monona County agricultural land revaluation in 2011 resulted in an average increase of 35.45%. The Otto properties had a median increase of 43% and an average increase of 62%.

² This parcel also includes \$113,132 in improvement value, which is not in dispute.

³ This parcel also includes \$812 in improvement value, which is not in dispute.

⁴ Ottos contend the Board of Review did not respond to a comment on his petition requesting a farm inspection. They further complain they never had an opportunity for a Board of Review hearing and the amount of time the protest was considered was inadequate and allege other irregularities in its decision-making. The Board of Review operates independent of this Board and sets its own procedures and schedule. However, we note that Otto's protest form did not indicate they wished an oral hearing, which was their option.

The Ottos then appealed to this Board on the same grounds. They request this Board value the properties at the January 1, 2010, values and then increase those assessments by an additional 30%.

As a preliminary matter, at hearing Robert Otto objected to Assistant County Attorney Ian McConeghey representing the Board of Review claiming he had no notice of this representation. The Notice of Appeal mailed in July 2011 to both parties listed County Attorney Michael P. Jensen. McConeghey joined the county attorney office in July 2012. The Notice of Hearing mailed in December 2012 sent to the Ottos identified Christyne Martens, the former assistant county attorney whom McConeghey replaced, as the legal representative for the Board of Review. The Ottos copied Martens on their request for continuance in January 2013 (Exhibit 16) and referenced contact with the County Attorney's office in email correspondence to counsel for this Board in January 2013 (Exhibit 15). Additionally, the order granting the continuance and setting a new hearing date was copied to both Otto and the assistant county attorney in February 2013 (Exhibit 17). We also note the statutory mandate for the county attorney to represent the Board of Review. Iowa Code §331.756(65), § 441.41. We find the Ottos had adequate notice that the county attorney's office was the legal representative for the Board of Review. For these reasons, Otto's objection was overruled.

In their submissions, the Ottos provided thorough written arguments and extensive documentation to support their claims. They were well-prepared and very organized in their presentation at hearing.

Robert Otto testified at hearing the subject farm (USDA Farm #309) is used for both crop and livestock production. It includes approximately 152 acres of field corn, 55 acres of soybeans, 52 acres of alfalfa hay, and 109 acres of permanent grass and timber used for grassland/timber to support the cow/calf herd, for summer grazing, and shade for the feeder calves. (Exhibits 1-1 through 1-5, Exhibit 11). According to Otto's calculations, his land values have increased between 20% and 232% since the last assessment. (Exhibits 2 & 3A-3C).

Otto claims the method of relying solely on the Corn Suitability Ratings (CSR) newly implemented in 2011 is not designed for timber or open pastures. He provided an article from Iowa State University explaining the CSR ratings and indicating it is an index that rates soil types based on their productivity for row-crop production. (Exhibit 18). He believes using this method to value timber and pastures violates Iowa Code subsections 441.21(1)(e) and (g) because the CSR values, based on productivity and net earning capacity, are designed only for application to row crop production.

Otto believes CSR ratings do not consider the dams, creeks, or roadbeds on his land. He estimates it would cost \$2000 to \$2500 per acre to make timber and pasture capable of producing row crops and require years of vegetation cover before crop production could begin. In his opinion, past records show pasture and timber land generate one-third or less in earnings than row crop land. He thinks each parcel should be individually valued based on its particular productivity. He also contends assessing agricultural buildings and the land under them, amounts to double taxation. We note the land in each parcel is separately valued and then the improvement value is added to the land value to arrive at the total parcel assessment. This assessment method does not value the land twice.

Additionally, Otto provided the Conservation Plan Approval Policy and an accompanying letter he received from the Monona County Soil and Water Conservation District (Exhibits 29 – 30). It states the district discourages conversion of land for agricultural production that does not have the capability to sustain long-term row crop agriculture due to its slope and/or soil composition. This supports his argument that certain farmland should not be converted to row crop use under good land stewardship principles.

The Ottos submitted numerous photographs demonstrating their timber and pasture land features, including steep slope, access difficulties, creeks, ditches, light soils, rocks, and timber density (Exhibits 34 -36). They contend the assessment of land with these characteristics should be adjusted

downward because of their diminished productivity. They estimate the value of pasture and timber land should range variably from 25% to 35% of adjoining row crop land.

Exhibits 19A through 19C were offered to show comparison of pasture, timber, and crop land values. These exhibits refer to the fair market value of different types of agricultural land. Exhibits 20A, 20B, 21A, 21B and 21C were also submitted to show 2012 sale prices of farm property in Monona County depending on whether it is row crop, pasture, or timber land and its CSR rating. Ottos offered a portion of a 2013 article from Iowa Farmer Today reporting pasture cash rent averages lower than cropland cash rent in a multistate survey, which excluded Iowa (Exhibit 24). In Iowa, agricultural land is not assessed based on its fair market value. Instead, it is valued based on its productivity and net earning capacity by a formula set forth in the Iowa Administrative Rules 701—71.3. For this reason, the county comparisons are given no weight.

Otto compares crop insurance productivity/income estimates and assessments for property in Crawford County and Monona County (Exhibits 25-28). Under the administrative rules, each county's CSR values are separately calculated based on that county's productivity and net earning capacity. r. 701-71.3(1). For this reason, inequity cannot be established by comparing assessments in two different taxing jurisdictions. *See also* § 441.37(1)(a)(1). Otto concludes the new method used by the county assessor in 2011 over valued his property.

Tim Peters, Monona County Assessor, testified on behalf of the Board of Review. The previous assessor updated the soil maps for the 2011 reassessment and this resulted in changed assessed values for agricultural properties. He reported the change generated twenty-six farm owners to file protests on 209 parcels and all were denied regardless of whether they had oral hearings or not. Peters testified the change was uniformly applied to all agricultural parcels. He reported the current productivity formula includes pastureland. Peters testified fifty counties make no adjustment to agricultural land values and he currently adjusts only for ponds and water. However, Peters testified

he is implementing the Department’s proposed amendment to adjust non-cropland in Monona County even before it is fully adopted at the state level. The calculation of CSR points per parcel with the soil type slope and erosion ratings are included in the chart below.

Parcel	Acres	Adjusted CSR Points	CSR x \$26.10 ⁵ 2011 AV	Slope	Eroded
8542-02-1-75-001	37.00	1814.02	\$ 47,364	5-30%	Mod-Sev
8542-01-2-50-001	40.00	2095.53	\$ 54,714	5-20%	Mod-Sev
8542-01-2-75-001	40.00	2132.74	\$ 55,686	5-20%	Mod-Sev
8542-01-4-00-001	39.00	2238.9	\$ 58,458	5-20%	Mod-Sev
8542-01-4-75-001	38.00	2162.51	\$ 56,463	5-20%	Mod
8542-01-1-00-001	36.60	2064.83	\$ 53,913	2-20%	Mod-Sev
8542-01-1-25-001	37.13	1890.7	\$ 49,366	5-20%	Mod-Sev
8542-01-1-50-001	40.00	2256.02	\$ 58,905	5-20%	Mod-Sev
8542-01-1-75-001	39.00	2364.93	\$ 61,748	2-20%	Mod-Sev

We take notice of the Iowa Department of Revenue proposed an amendment to Chapter 71, “Assessment Practices and Equalization,” pertaining to the valuation of agricultural real estate. IAB Vol. XXXV, No. 19 (3/20/13) p. 1506, ARC 0653C. A copy of the Notice of Intended Action is attached to this Order for reference. The amendment addresses the lack of uniformity in the distribution of agricultural productivity value at a parcel level across the state by adjusting non-cropland values. The proposed amendment provides an example of the calculation used to compute the adjustment on land defined as non-cropland. The proposed amendment also includes a provision allowing taxpayers to apply to the county for the adjustment to non-cropland beginning with the 2014 assessment and mandating assessors make the adjustments. The Department recommends assessors implement the plan for the 2017 assessment year.

We are sympathetic to the Ottos’ concern the current CSR formula does not distinguish between cropland and non-cropland in calculating productivity and net earning capacity, and the

⁵ The 2011 value per CSR point was \$26.10746 per point in Monona County. The value listed above and the assessed values are rounded figures. This is based on the soil reports in the record, updated by the corrected CSR value provided by Assessor Tim Peters.

resulting inequity they identify in their assessments. It appears this has been a widespread concern and the proposed amendment incorporated recommendations from a stakeholder group including members from the Iowa Association of Assessors, Iowa Cattlemen's Association, Iowa Corn Growers Association, Farm Bureau, Iowa Natural Heritage Foundation, Iowa Soybean Association, and a farmer representative. Hopefully, the Ottos' future assessments will reflect the prescribed adjustment to their timber and pastureland.

However, the burden in this appeal is on the Ottos to prove inequity in their assessments, or to prove the properties are over-assessed and the subject properties' correct values as of January 1, 2011 under Iowa law. The preponderance of the evidence does not support their claims. Therefore, we affirm the assessment as determined by the Monona County Board of Review.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value

established in an arm's-length sale of the property. § 441.21(1)(b). However, if property is classified agricultural, it is to be assessed and valued on its productivity and net earning capacity.

§ 441.21(1)(e).

Iowa Code section 441.21(1)(e) provides that agricultural real estate be assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. It also provides that any formula used to calculate productivity and net earning capacity must be adopted by administrative rule. § 441.21(1)(e). In determining the productivity and net earning capacity of agricultural real estate, the assessor is required to use available data from Iowa State University, the Iowa crop and livestock reporting service, the Department of Revenue, the *Iowa Real Property Appraisal Manual*, and to consider the results of a modern soil survey, if completed.

§ 441.21(1)(f); Iowa Administrative Code r. 701-71.3. The Ottos' parcels carry an agricultural classification, which requires that it be valued using the prescribed productivity formula. *See* Iowa Admin. Code rule 701-71.3, 701-71.12.

To prove equity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable...(2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher

proportion of this actual value. *Id.* at 579-80. The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one-hundred percent of market value.

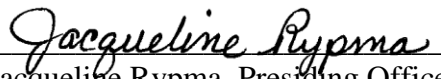
§ 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

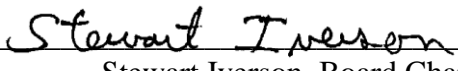
The Ottos did not prove that the assessor applied the assessing method in a non-uniform manner or that the assessment was otherwise inequitable. The Ottos did not establish inequity in the assessment under *Eagle Foods* or *Maxwell*. Additionally, the Ottos compared assessments from Crawford County and Monona County to establish their equity claim. Assessments from two different assessing jurisdictions are not comparable. § 441.37(1)(a)(1); *Maytag Co. v. Partridge*, 210 N.W.2d 584, 594-595 (Iowa 1973).

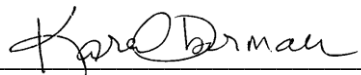
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), there must be evidence 1) that the assessment is excessive and 2) of the property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Ottos did not establish the correct values of the subject properties. Aside from asking that the subject property's assessment be returned to the January 1, 2010, value plus a 30% increase, the Ottos provided no evidence the resulting values are also the correct values of the properties as of January 1, 2011. The evidence they did provide concerned the market value of farmland and not its value based on the productivity and earning capacity as required by Iowa law and the current administrative rules promulgated by the Iowa Department of Revenue. However, we are encouraged the Department has proposed an amendment to the rules to address the legitimate issue the Ottos raise.

THE APPEAL BOARD ORDERS the assessment of the Otto property located in Cooper Township, Monona County, Iowa, as of January 1, 2011, set by the Monona County Board of Review, is affirmed.

Dated this 24th day of May, 2013.


Jacqueline Rypma, Presiding Officer



Stewart Iverson, Board Chair


Karen Oberman, Board Member

Copies to:

Robert E. & Linda K. Otto
44868 110th Street
Mapleton, IA 51034
APPELLANTS

Ian McConeghey
Assistant Monona County Attorney
610 Iowa Avenue
Onawa, IA 51040
ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on May 24, 2013.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	